IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1147 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESHKUMAR PRITAMLAL BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1147 of 1992

MR AM RAVAL for Petitioner No. 1-3

MR ND GOHIL, AGP for Respondent - State

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/10/2004

ORAL JUDGEMENT

1. Since this petition is initially filed challenging the two separate Sections of Recruitment Rules applied in two different departments, the learned advocate for petitioners has confined the petition to the

petitioner No.3 herein and consequently, maintained the challenge in the petition against the constitutional validity of the Assistant Engineers (Civil) Road and Building Department (Recruitment) Rules, 1983. The petition is, therefore, not pressed for petitioners No.1 and 2 and for the consequential challenge to the Assistant Engineers (Civil) Narmada and Water Resources Department (Recruitment) Rules, 1991, it would be open for those petitioners to maintain separate proceedings, if so desired.

2. The learned advocate for the petitioner seeks permission to delete the petitioners No.1 and 2 from the petition. Permission granted.

3. In this petition, the case of sole surviving petitioner is that he was possessing the qualification of Diploma in Civil Engineering and while in service with the permission of the Government, he also acquired degree in Civil Engineering. It is further submitted that he was holding the post of Additional Assistant Engineer and upon achieving the qualification of the degree in Civil Engineering, he had a right to be absorbed in the cadre of Assistant Engineer with certain percentage of his service already put in as Additional Assistant Engineer for the purpose of counting seniority in the cadre. It is the case of the petitioner as put up through his counsel that by virtue of the past service, the petitioner would have been in a better position to become a Deputy Executive Engineer. It is, however, submitted that due to introduction of Assistant Engineers (Civil) Road and Building Department (Recruitment) Rules, 1983, the situation has materially changed and the post of Assistant Engineer has now become 100% direct recruitment post and it is, therefore, not possible for the petitioner to be absorbed in the said cadre and enhance his chance of promotion to the post of Deputy Executive Engineer. The petitioner has, therefore, challenged the constitutional validity of the said Recruitment Rules.

4. It is not in dispute that in the said Recruitment Rules, the Government has decided to fill up the post of Assistant Engineer by 100% direct recruitment. It is also not in dispute that the petitioner is fulfilling the required educational qualification, prescribed for the post of Assistant Engineer, by virtue of the said Recruitment Rules of 1983. It is, therefore, not in dispute that the petitioner would have been eligible for seeking direct recruitment to the post of Assistant Engineer, if he otherwise fulfilled, other qualifications laid down in the said Recruitment Rules. In the said

Rules of 1983, however, there is a condition that the candidates should not be more than 28 years of age. The petitioner has, therefore, specifically, challenged the Rule - 3 of the said Recruitment Rules, in which the maximum age limit of 28 years is prescribed for the candidates seeking direct recruitment for the post in question. It is not in dispute that so far as this maximum age is concerned, there is no distinction on the basis of the candidates possessing the qualification of Diploma or Degree in Civil Engineering. The petitioner has, however, challenged the validity of the said Rules on the ground that there is no rational basis or logic in prescribing the maximum age limit of 28 years for direct recruitment.

5. By now it is well settled that the Court would presume the constitutionality of the statute and the burden is on party contending that the statute is unconstitutional to establish the said fact through proper material on record. In the decision of THE STATE OF JAMMU & KASHMIR Vs. TRILOKI NATH KHOSA AND OTHERS, reported in AIR 1974 S.C. 1, the Hon'ble Supreme Court was pleased to observe that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It was further observed that a rule cannot be struck down as discriminatory on any priori reasoning. It was also observed that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art.14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. In para-26, the Hon'ble Supreme Court has made the following observations.

> "26. Respondents have assailed the classification in the clearest terms but their challenge is purely doctrinaire 'Academic or technical qualification can be germane only at the time of initial recruitment; for purposes of promotion efficiency and experience alone must count' - this is the content of their challenge. The challenge, at best, reflects the respondents' opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the theory advocated by

> the respondents is not to be preferred. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld."

6. This ratio in the said case of Hon'ble Supreme Court has been followed and reiterated in long line of decisions of the Hon'ble Supreme Court and it is not necessary to refer to all those cases.

7. In view of the above legal position, I find that the petitioner has not laid any foundation to establish that the requirement of a candidate to be below the age of 28 years for being qualified for recruitment to the post of Assistant Engineers (Civil) is unconstitutional. Simply by suggesting that the said Rule is arbitrary and without rational basis or logic would not render the rule framed by the Government in exercise of power under Article 309 of the Constitution of India unconstitutional. For the efficiency in the public service to prescribe for maximum age limit is well known and well established and well accepted phenomena and unless and untill the age limit prescribed by the recruitment rules is shown to be wholly arbitrary and unreasonable, it is not the duty of the Court to substitute its own judgment in place of that of the rule making body and come to a conclusion that some different age limit would better suit the purpose of the Government.

8. On the basis of the above discussion, I find that the petitioner's challenge to the constitutional validity of the recruitment rules in question, has no merits and the same must fail.

9. The entire petition having been based on footing of the challenge to the constitutional validity to the recruitment rules, which I do not find arbitrary, unreasonable or unjust, the petition also must fail.

10. In the result, I do not find any merit in the petition and the same is, hereby rejected. No order as to costs. Rule is discharged.

11. The learned advocate for the petitioner has submitted that the petitioner and other degree holders would suffer in the matter of pay scale even after

achieving the qualification of the degree in Civil Engineering. For want of pleading and prayer in this regard, this issue is not examined by me in this matter. It will, however, be open for the petitioner to take such legal recourse, as may be advised.

[Akil Kureshi,J.]

(vijay)